IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Crl.Rev.Pet.No. 865 of 1997()

C.C.NO.447/1994 OF THE JFCM-II,(FOREST OFFENCES), PUNALUR

REVN. PETITIONER:

VIJAYADHARAN NAIR,
AGED 56 YEARS,
S/O.NANU PILLAI,
KALIKAL PUTHEN VEEDU
(THRIVENI),
PIRAVANTHOOR VILLAGE,
ELIKATTOOR MURI,
PATHANAPURAM.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE DIRECTOR OF PROSECUTION,
HIGH COURT OF KERALA,
ERNAKULAM.

2. SANKARANARAYANAN,
LEELA VIHAR,
ULIYAKOVILCHERI,
KOLLAM VILLAGE,
KOLLAM DISTRICT.

3. LEELA BHAI,
W/O.SANKARANARAYANAN,
LEELA VIHAR,
ULIYAKOVIL CHERI,
KOLLAM DISTRICT.

4. JAYAMOHAN,
LEELA VIHAR,
ULIYAKOVILCHERI,
KOLLAM DISTRICT.

5. SAJI,
LEELA VIHAR,
ULIYAKOVIL CHERI,
KOLLAM DISTRICT.

6. JYOTHI,
C.K.AGENCIES,
KUREEPPUZHA WEST MURI,
KOLLAM DISTRICT.

BY ADV. DR.K.P.SATHEESAN
SRI K.K.GOPINATHAN NAIR
PUBLIC PROSECUTOR SRI C.K.SURESH FOR R1

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.3527/1997 IN CRL.R.P.NO.865/1997

CLOSED

SD/-K.R.UDAYABHANU, JUDGE

10/09/2007

\\TRUE COPY//

K.R.UDAYABHANU, J.

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Crl.R.P.No.865 of 1997

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Dated this the 10th day of September, 2007

O R D E R

The revision petitioner is the de facto complainant, who had initiated proceedings against the accused for the offences under Sections 402 and 406 read with Section 34 of the Indian Penal Code. The trial court acquitted the accused. The private complaint filed was forwarded to the police under Section 156(3) Cr.P.C and the police filed the charge.

2. The prosecution case is that on 06/08/1992, at about 5 p.m, the accused visited his house and they requested for the varpu (a vessel made of bronze) for the purpose of preparing food for the ceremonies consequent on the death of the father, undertaking that the same shall be returned after the function is over. The second accused is the sister of the de facto complainant, i.e., PW.1 and, the first accused is the brother-in-law and accused 3 to 5 are the sons and daughter of accused 1 and 2.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 5 and Exts.P1 to P3. The varpu was seized by the police and produced before the court below. The court below has ordered that the disposal of the above varpu will be as per the final findings of the civil court. Soon after the taking away of the above varpu, PW.1 and others have instituted O.S.No.326/1992 seeking partition of the properties of the deceased father and the second accused. The sister (A2) has filed O.S.No.172/1993 for declaration and injunction with respect to the will allegedly executed by the deceased father in her favour as per which certain properties and as well as the varpu was given to her. It is submitted that the civil cases ended in favour of the de facto complainant and others and it was found that the will is not genuine. Decree for partition was passed. It is submitted that the appeal filed by the second accused was dismissed. The above fact position is not disputed.

4. It is the contention that the varpu is owned by the de facto complainant and his name is inscribed on the varpu.

5. The trial court found that the evidence of PWs.1 to 3 were examined in support of the prosecution version and of whom PWs.2

and 3 are independent witnesses, are contradictory on certain material particulars. The presence of accused 2 and 5, the sister and her daughter is not mentioned by any of the witnesses. It was also found that the house of the de facto complainant is very near to the family house wherein the function was conducted. Since it is not explained as to why PW.1 has not himself taken the varpu to the family house, as the function is with respect to the death of his father, the court also felt suspicious of why when the varpu and other items were taken in a tempo there was no obstruction. The version of PWs.2 and 3 as to the time of the incident was also found contradictory. The function has taken place at 10 a.m., whereas, PWs.2 and 3 have reached the house at 3 p.m. The time of incident mentioned by them also varied. Moreover, there is a delay of two months in instituting the proceedings. It is in the above circumstances that the court below found that the accused is entitled to the benefit of doubt and the matter involved is purely civil in nature as the proceedings is pending in the civil court with respect to the ownership of the varpu. It is essential that the dishonest intention has to be established positively.

In the circumstances and considering the constraints of the revisional jurisdiction against acquittal, I find no reason to interfere with the findings of the trial court. The varpu in the custody of the court is to be disposed of as per the ownership found in the final order of the civil court. The revision petition is disposed of accordingly.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.865 of 1997

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O R D E R

10th September, 2007